IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/CO/12/2012 and E/156/2012

(Arising out of Order-in-Appeal No. 77/2011 dated 21.11.2011 passed by the Commissioner of Central Excise and Service Tax (Appeals), LTU, Chennai)

Commissioner of Central Excise, LTU, Chennai   Appellant

Vs.

M/s. Wheels India Limited   Respondent

Appearance

Shri K. Veerabhadra Reddy, JC (AR) for the Appellant
Shri M. Kannan, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **16.04.2018**

Final Order No. **41128 / 2018**

Per Bench

Brief facts are that the respondents are engaged in manufacture of wheels and components for cars, tractors, earth movers etc. and had availed CENVAT credit of service tax paid in relation to lease rentals for windmills situated outside their factory. The department was of the view that the said credit is not eligible for the reason that the windmills are situated outside the factory and that the electricity generated is not directly received in the factory of the respondent. Show cause notice was issued proposing to deny the credit and proposing to recover the same along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) set aside the adjudication order. Hence, department is in appeal before the Tribunal.

2. The ld. AR Shri K. Veerabhadra Reddy reiterated the grounds of appeal.

3. The ld. counsel Shri M. Kannan appearing on behalf of the respondent submitted that the issue is covered by the decision in the case of Commissioner of Central Excise, Aurangabad Vs. Endurance Technology Pvt. Ltd. – 2017 (52) STR 361 (Bom.) as well as the decision of the Larger Bench of the Tribunal in the case of Parry Engineering & Electronics P. Ltd. Vs. Commissioner of Central Excise, Ahmedabad – 2015 (40) STR 243 (Tri. LB). It is also submitted by him that this Tribunal had followed the decision of the Hon'ble High Court of Bombay in the case of Hinduja Foundries Ltd. Vs. Commissioner of Central Excise, Chennai vide Final Order No. 42426/2017 dated 24.10.2017.

4. Heard both sides.

5. The issue whether the credit availed on service tax paid for lease rentals for windmills is eligible or not has been decided by the Larger Bench of the Tribunal in the case of Parry Engineering and Electronics P. Ltd. (supra). The said view was maintained by the Hon'ble High Court of Bombay in the case of Endurance Technology Pvt. Ltd. (supra). The Tribunal in the case of M/s. Hinduja Foundries Ltd. (cited supra) has followed the said decisions and held the issue in favour of the assessee.

6. Following the same, we find that the Commissioner (Appeals) has rightly set aside the demand. We do not find any infirmity in the order passed by the Commissioner (Appeals). The impugned order is upheld and the appeal filed by the department is dismissed. The cross-objection filed by the respondent stands disposed of accordingly.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex